

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----- X

United States of America,

COMPLAINT

Plaintiff,

Civil Action No.

- against -

Ernst Ducena aka Ernst Ducena, M.D.

Defendant.

----- X

The United States of America alleges that:

FIRST: Jurisdiction is conferred upon this Court pursuant to Title 28, United States Code, Section 1345.

SECOND: On information and belief, the Defendant resides within the Eastern District of New York at 495 Emerson Ave, North Baldwin, New York 11510.

THIRD: This lawsuit is filed for a sum certain due the Plaintiff.

FOURTH: The Defendant is a physician currently registered under license # 210429 in New York State. The Defendant owes the United States the total of \$390,636.40, that is, \$218,105.34 in principal, \$172,531.06 in interest as of 1/30/19 as set forth in the Certificate of Indebtedness, incorporated herein by reference, attached as Exhibit "A".

FIFTH: The Defendant was approved to participate in the National Health Services Corps Loan Repayment Program. The Defendant agreed to provide health services on a full-time basis in a health professional shortage area of a period of two years (8/1/11 – 7/31/13). The Defendant was excluded from N.Y. Medicaid effective 6/14/2012, defaulted, and did not complete the service obligation.

SIXTH: As a result of aforesaid default, the Defendant is liable to the Plaintiff for the balance set forth in the Certificate of Intendedness. Interest continues to accrue on the from 1/31/19 at a rate of 10.875% per annum, or \$64.98 per diem. Exhibit A.

SEVENTH: No part of the aforesaid sum has paid, although duly demanded.

WHEREFORE, the United States demands judgment against defendant as follows:

1. In the amount of \$390,636.40, that is, \$218,105.34 in principal, \$172,531.06 in interest as of 1/30/19.
2. Pre-judgment interest at the rate of 10.875% per annum, or \$64.98 per diem, from January 31, 2019 through the date of judgment on the amount set forth in subparagraph 1, above,
3. Post-judgment interest, pursuant to 28 U.S.C. ' 1961 at the legal rate then in effect, from the date of entry of judgment until the judgment is paid in full;
4. Administrative costs of suit; and
5. Such other relief as this Court may deem just and proper.

Dated: New York, New York
August 13, 2019

Respectfully submitted,

BY: /s/ John S. Manfredi
John S. Manfredi
ATTORNEY FOR THE UNITED STATES OF
AMERICA
Manfredi Law Group, PLLC
302 East 19th St. Suite 2A
New York, New York 10003
PH: 347 614 7006
Fax 347 332 1740

Exhibit A



DEPARTMENT OF HEALTH & HUMAN SERVICES

Program Support Center

Debt Collection Center

CERTIFICATE OF INDEBTEDNESS
National Health Service Corps
Loan Repayment Program

Ernst Ducena, M.D.
495 Emerson Ave
North Baldwin, NY 11510-2202
REF: 23140027
SSN: XXX-XX-4670

Total debt due United States as of January 30, 2019: \$390,636.40 (principal \$218,105.34, interest \$172,531.06).

I certify that the Department of Health and Human Services' (DHHS) records show that the individual named above is indebted to the United States in the amount stated above. Interest accrues on the principal amount of this debt at the fixed rate of 10.875% per annum. The interest accrues at \$64.98 per day.

Dr. Ducena submitted an application to participate in the National Health Service Corps (NHSC) Loan Repayment Program (LRP) (42 U.S.C. 254l-1). The application was approved, and he entered into an NHSC/LRP contract on August 1, 2011. Funds totaling \$60,000.00 were paid to him by the Federal government in accordance with the provisions of the statute and implementing regulations [42 C.F.R. Part 62, Subpart B].

These funds were paid upon the condition that he provide health services on a full-time clinical basis in a health professional shortage area (designated under 42 U.S.C. 254e and 42 C.F.R. Part 5) assigned by the Secretary. He was obligated to provide service for 2 years, from August 01, 2011 to July 31, 2013 at Susan's Place in Bronx, New York. He was placed in default effective October 24, 2011 due to being excluded from New York Medicaid. He did not complete the service obligation owed under the written contract. He completed 84 days; 2 full months of service.

Pursuant to 42 U.S.C. 254o(c)(1), if (for any reason) an individual fails either to begin or to complete his or her period of obligated service, the United States shall be entitled to recover from the individual an amount equal to the sum of:

- (A) the total of the amounts paid by the United States for any period of obligated service not served,
- (B) a penalty equal to the product of the number of months of obligated service that were not completed by an individual, multiplied by \$7,500, and
- (C) interest on the above amounts from the date of the breach;

except, the amount the United States is entitled to recover shall not be less than \$31,000.00.

PAGE 2 - CERTIFICATE OF INDEBTEDNESS - ERNST DUCENA, M.D.

The amount the United States is entitled to recover consists of:

- (A) the total of the amounts paid by the United States for any period of obligated service not served,
 - \$53,105.34; (\$60,000 *divided by* 731 obligated service days *times* 647 days unserved), and
- (B) an amount equal to the product of the full number of months of obligated service not completed, multiplied by \$7,500.00.
 - \$165,000.00 (\$7,500 *multiplied by* 22 months of service not completed)

For a total beginning principal of \$218,105.34

- (C) interest on the above amounts from the date of the breach.

On December 5, 2013, he was notified that he had been placed in default for failing to fulfill the requirements of his NHSC/LRP contract. He was advised that the debt must be paid within one (1) year from the date of default. He was also provided instructions for entering a repayment agreement.

By letter dated December 6, 2013, he was advised that his account was delinquent. He was notified of HHS' intent to refer his debt to other Federal agencies for the purpose of administrative offset, which may include Federal tax refund offset, salary offset, wage garnishment, and other Federal or State Agencies payments. He was advised that paying the debt in full or entering into an RA would terminate administrative offset.

In a letter dated January 30, 2014, he was advised that his account had been referred to a private collection agency. He was notified that unless payment in full or an RA was concluded, the account would be referred to DOJ for enforced collection.

By letters dated July 15, 2017, November 3, 2018 and November 22, 2018, Dr. Ducena was sent a final notice regarding the delinquent debt. He was advised that if repayment arrangements were not finalized that his debt would be referred to the DOJ for enforced collection. He did not comply.

Repeated attempts by HHS have been unsuccessful in establishing an acceptable repayment agreement. The debt is now being referred to the U.S. Department of Justice (DOJ) for enforced collection.

CERTIFICATION: *Pursuant to 28 U.S.C. 1746, I certify under penalty of perjury that the foregoing is true and correct.*

2/6/2019
Date

Melodie R. Sanders
Melodie R. Sanders
Chief, Debt Referral Section
Program Support Center
U.S. Department of Health and Human Services

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
John Manfredi
Manfredi Law Group, PLLC
302 East 19th Street, Suite 2A, New York, New York 10003 ph 347 614 7006

DEFENDANTS

Ernst Ducena aka Ernst Ducena, M.D.

County of Residence of First Listed Defendant Nassau
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

N/A

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- X 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	' 1	' 1	Incorporated or Principal Place of Business In This State	' 4	' 4
Citizen of Another State	' 2	' 2	Incorporated and Principal Place of Business In Another State	' 5	' 5
Citizen or Subject of a Foreign Country	' 3	' 3	Foreign Nation	' 6	' 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$390,636.40

CHECK YES only if demanded in complaint:

JURY DEMAND: No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE August 13, 2019

SIGNATURE OF ATTORNEY OF RECORD /s/ John Manfredi

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, John Manfredi, counsel for Plaintiff do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

X

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County?
No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County?
Yes
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District?
Yes
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:
.

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

No

I certify the accuracy of all information provided above.

Signature: /s/ John Manfredi

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Last Modified: 11/27/2017